

<p>This Opinion is Not a Precedent of the TTAB</p>
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Hearing: January 29, 2015

Mailed: February 17, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Vera Payment Plans, LLC

Serial Nos. 85814705 & 85866509

Lawrence J. Siskind and Katie W. McKnight of Harvey Siskind LLP,
for Vera Payment Plans, LLC.

Jennifer D. Richardson, Trademark Examining Attorney, Law Office 113,
Odette Bonnet, Managing Attorney.

Before Bucher, Wellington and Wolfson,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Vera Payment Plans, LLC (“Applicant”) seeks registration on the Principal Register of the marks set forth below both for “financial services, namely, providing financing for motor vehicle dealers to offer vehicle service contracts,” in Class 36.

1. VERA in standard character form;¹
2. VERA PAYMENT PLANS and design shown below.²

¹ Application Serial No. 85814705 was filed on January 3, 2013, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.



Applicant disclaimed the exclusive right to use the term “Payment Plans.” In both applications, Applicant included a statement that the “English translation of ‘Vera’ is ‘true.’”

The Trademark Examining Attorney has refused registration of Applicant’s marks under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant’s marks so resemble the registered marks set forth below, and owned by the same entity, for “financial advice and consultancy services,” in Class 36, as to be likely to cause confusion.

1. Registration No. 4005989 for the mark VERA FINANCIAL SOLUTIONS, in standard character form;³ and

2. Registration No. 4005991 for the mark VERA FINANCIAL SOLUTIONS and design shown below.⁴



² Application Serial No. 85866509 was filed on January 3, 2013, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

³ Registered August 2, 2011.

⁴ Registered August 2, 2011.

Registrant disclaimed the exclusive right to use the term “Financial Solutions.”

Because the two appeals include common questions of fact and law and the records are essentially identical, we consolidate the appeals. References to the record are from the prosecution history of Serial No. 85814705 unless otherwise indicated.

After the Examining Attorney made the refusal final, Applicant appealed to this Board. An oral hearing was held on January 29, 2015.

I. Preliminary Issue

Applicant attached exhibits to its main brief. Applicants are often under the impression that attaching previously-filed evidence to a brief (and citing to the attachments, rather than to the record) is a courtesy or a convenience to the Board. It is neither. When considering a case for final disposition, the entire record is readily available to the panel. Because we must determine whether such attachments are properly of record, citation to the attachment requires examination of the attachment and then an attempt to locate the same evidence in the record developed during the prosecution of the applications, requiring more time and effort than would have been necessary if citations were directly to the prosecution history or trial record. Suffice it to say, we have not considered the exhibits attached to the briefs, unless they were otherwise made of record during the prosecution of the applications.

II. Applicable Law

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks”). These factors, and any other relevant *du Pont* factors in the proceeding now before us, will be considered in this decision.

- A. The similarity or dissimilarity of the marks in their entirety in terms of appearance, sound, connotation and commercial impression.

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567. In a particular case, “finding of similarity as to any one factor (sight, sound or meaning) alone ‘may be sufficient to support a holding that the marks are confusingly similar.’” *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988) (citations omitted). *See also In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987). In comparing the marks, we are mindful that “[t]he proper test is not a side-

by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). *See also San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff’d mem.*, 972 F.2d 1353 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). Finally, although we must compare the marks in their entireties, it is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

With the above principles in mind, we analyze Applicant’s applied-for marks individually vis-à-vis the registered marks.

1. Applicant’s VERA (in standard character form) mark

Applicant is seeking to register the mark VERA in standard character form. For purposes of our similarity of marks analysis, we focus on Registrant’s mark, VERA

FINANCIAL SOLUTIONS, in standard character form, because it is more similar to Applicant's proposed mark than the second registered mark with a design.

In comparing the marks, we find that Applicant's proposed mark, VERA, is identical to the dominant element of Registrant's mark. This is so because the additional wording in Registrant's mark, "Financial Solutions," is highly descriptive when used in connection with "financial advice and consultancy services" and Registrant has disclaimed the exclusive right to use this term. It is well-settled that disclaimed, descriptive matter may have less significance in likelihood of confusion determinations. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), *quoting*, *In re National Data Corp.*, 224 USPQ at 752 ("Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion"); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001).

Because Applicant's mark VERA is identical to the dominant element in Registrant's mark, the two marks are similar in terms of appearance, sound, connotation and commercial impression. To the extent that consumers are aware that "vera" is translated into English as "true," any connotation or commercial impression created by this term in each of the marks would be the same. It has not been shown that the word "vera" or "true" has any special meaning in the context of the respective services; thus, consumers will understand Applicant's mark and the dominant element of the registered mark in the same manner regardless of whether

they are aware of its translated meaning. We further note that in cases where Registrant's mark encompasses Applicant's entire mark, the Board has found that the marks to be similar. *See, In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010) (applicant's mark ML is similar to registrant's mark ML MARK LEES); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406, 407 (CCPA 1967) (THE LILLY as a mark for women's dresses is likely to be confused with LILLI ANN for women's apparel including dresses); *In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (CAREER IMAGE for women's clothing stores and women's clothing likely to cause confusion with CREST CAREER IMAGES for uniforms including items of women's clothing). In *United States Shoe*, the Board observed that "Applicant's mark would appear to prospective purchasers to be a shortened form of registrant's mark." 229 USPQ at 709.

2. Applicant's VERA PAYMENT PLANS (and design) mark

With respect to Applicant's composite mark shown at right we find this to be similar to both of the cited registered marks because they share the same dominant



term, VERA. In Applicant's mark, the VERA element is centrally superimposed across entirety of the circular design.

Likewise, in Registrant's composite mark, shown at right, the term VERA is most prominently placed in large letters on a fanciful white road going off into the distance toward a sunrise



(or sunset) design within a blue circle. The design in Registrant's mark is clearly background for the VERA element and the descriptive or generic wording FINANCIAL SOLUTIONS, which has been disclaimed, appears in much smaller lettering. For reasons previously mentioned and those below, Registrant's VERA FINANCIAL SOLUTIONS mark, in standard character form, also bears a strong similarity to Applicant's composite mark.

Because VERA is the dominant element in each of the marks, this helps create similar commercial impressions (*i.e.*, Vera (or "true") Payment Plans and Vera (or "true") Financial Solutions). Consumers may mistakenly believe that the additional descriptive terms, namely "Payment Plans" in Applicant's mark and "Financial Solutions" in Registrant's marks, are being used merely to identify different financial services offered by the same entity.

We do not ignore the design elements in the composite marks; however, it remains clear that VERA is the term most likely to make an impression on consumers. Indeed, when a mark comprises both a word and a design, the word is normally accorded greater weight because it would be used by purchasers to request the goods or services. *In re 1st USA Realty Professionals Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007). *See also In re Viterro Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012) (*citing CBS Inc. v. Morrow*, 708 F. 2d 1579, 218 USPQ 198, 200 (Fed. Cir 1983)). We further note that the designs in the marks are alike in several ways. Both marks are presented in similar shades of blue and have circular-shaped background designs. As noted above, because we focus on the recollection of

the average purchaser, who normally retains a general rather than a specific impression of trademarks, *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012), the blue circular backgrounds help engender similar commercial impressions.

We find that Applicant's VERA PAYMENT PLANS and design mark is similar to both of Registrant's VERA FINANCIAL SOLUTIONS marks.

B. The number and nature of similar marks in use in connection with similar services.

Although Applicant did not contest the similarity of the marks, Applicant argued VERA is a weak term, entitled to only a narrow scope of protection or exclusivity of use.⁵ To support this contention, Applicant submitted 17 third-party registrations for "Ver-formative marks and other similar-sounding marks ... in connection with financial advice services, financial consulting services, and similar services,"⁶ with evidence showing the use of the marks in the registrations.

However, only three of the third-party registered marks had the term "Vera," and only Registration No. 2405358 for the mark FINNVERA for "financial analysis, financial consultation; financial planning and financial research services; financial forecasting" is reasonably related to Registrant's "financial advice and consultancy services." Registration No. 3694532 is for the mark VERO CM (stylized) for "financial investment advisory services." None of the other third-party registrations are as close to Registrant's marks as are Applicant's marks.

⁵ Applicant's Brief, p. 12.

⁶ Applicant's Brief, pp. 12 – 19, citing to the registrations submitted with Applicant's December 12, 2013 response to an Office Action.

Also, Applicant submitted excerpts from the websites listed below:⁷

1. Vera Gibbons, a financial journalist and financial analyst;
2. VerSprite, a security investment firm;
3. VERITAS Financial Services, a financial investment company;
4. VERITAS Financial, an insurance company;
5. VERITAS Financial Partners, a financial consulting company;
6. VERITAS Financial Group, a “co-educational finance organization at Harvard”;
7. VERITAS Planning Group, a financial planning firm; and
8. VERITAS Financial Consulting, a financial planning firm.

The purpose of submitting third-party marks which are allegedly similar to the marks at issue is to show that there are numerous marks with a common element used by different entities to show that the common element does not point uniquely and exclusively to a single source. *Angelica Corp. v. Collins & Aikman Corp.*, 192 USPQ 387, 393 (TTAB 1976). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 1369, 73 USPQ2d 1689, 1693 - 94 (Fed. Cir. 2005). With the exception of the Vera Gibbons website, none of the third-party websites use the term “Vera.” In the Vera Gibbons website, “Vera” is the author’s given name. There is no evidence that she is referred to as Vera in the financial field.

⁷ December 12, 2013 response to Office Action. The URL’s for the website were not legible on the printouts submitted; however, Applicant included the URL’s in its response.

In sum, the evidence of third-party use does not rise to the level of demonstrating that the term VERA in connection with financial services is so widespread as to undermine the strength of Registrant's marks or otherwise abbreviate their scope of protection vis-à-vis Applicant's mark. At best for Applicant, this is deemed to be a neutral factor.

- C. The conditions under which and buyers to whom sales are made, *i.e.*, "impulse" vs. careful, sophisticated purchasing.

The relevant consumers for Applicant's services are motor vehicle dealerships.

Applicant argues, without any evidentiary support, that motor vehicle dealers will exercise great care when assuming financing for vehicle service contracts.

... Applicant's customers – motor vehicle dealers – are a group of licensed professionals tasked with taking title to or otherwise holding an ownership interest in motor vehicles, and must be highly selective in searching for services that meet their specialized requirements. Over the course of any given vehicle service contract, which can last for several years, dealers will interact directly with Applicant regarding payments: therefore dealers are motivated to take great care in selecting a source of financing for vehicle service contracts.⁸

The problem with Applicant's argument is that we have only Applicant's counsel's statements as to the degree of care that customers will exercise and how Applicant's and Registrant's customers view the role of the marks in making their purchasing decisions. No foundation has been laid regarding counsel's investigation or understanding of the market and vehicle service contract financing that would put counsel in a position to make statements regarding the thought process of

⁸ Applicant's Brief, pp. 10 – 11.

customers, which in this case is central to Applicant's contention that consumers exercise such a high degree of care that the likelihood of confusion will be minimized. *See In re U.S. Tsubaki, Inc.*, 109 USPQ2d 2002, 2006 (TTAB 2014). *Cf. In re DeBaun*, 687 F.2d 459, 214 USPQ 933, 934 & n.4 (CCPA 1982) ("we need not evaluate the weight to be given to the attorney's declaration with respect to statements more appropriately made by appellant"); *In re Simulations Publications, Inc.*, 521 F.2d 797, 187 USPQ 147, 148 (CCPA 1975) (where appellant argued that the magazines at issue deal with unrelated subject matter, the court held that "[s]tatements in a brief cannot take the place of evidence."); *In re Scarbrough*, 500 F.2d 560, 182 USPQ 298, 302 (CCPA 1974) (where patent claims were rejected for the insufficiency of disclosure under Section 112, the response of appellant was argument in lieu of evidence leading the court to hold that "argument of counsel cannot take the place of evidence lacking in the record.").

Nevertheless, due to the inherent nature of Applicant's services and that they are not offered to the general public, we agree with Applicant that motor vehicle dealers will exercise a certain degree of care when selecting financing for motor vehicle service contracts, and this *du Pont* factor favors a finding of no likelihood of confusion.

- D. The similarity or dissimilarity and nature of the services, established, likely-to-continue channels of trade and classes of consumers.

In determining whether the services are related, it is not necessary that the services of Applicant and Registrant be similar or competitive in character to support a holding of likelihood of confusion; it is sufficient for such purposes that

the services are related in some manner and/or that conditions and activities surrounding marketing of these services are such that they would or could be encountered by same persons under circumstances that could, because of similarities of marks used with them, give rise to the mistaken belief that they originate from or are in some way associated with the same source. *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722; *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010); *Schering Corporation v. Alza Corporation*, 207 USPQ 504, 507 (TTAB 1980); *Oxford Pendaflex Corporation v. Anixter Bros. Inc.*, 201 USPQ 851, 854 (TTAB 1978).

Furthermore, we must consider the services as they are described in the applications and registrations, regardless of what the record may reveal as to the particular nature of the services, channels of trade or class of consumers. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed”). *See also Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) (“Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods”). We also may not read limitations into the description of services. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ

937, 940 (Fed. Cir. 1983) (“There is no specific limitation and nothing in the inherent nature of Squirtco’s mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration”).

With the aforementioned principles in mind, we must presume that Registrant’s financial advice and consultancy services will be offered to automotive dealerships. We do not make this presumption lightly. Indeed, based on the record before, it is clear that financial advice and consultation services are offered and tailored to the automotive dealership industry. It would not be unexpected for the same entity providing such guidance to also render financing or loan services. In this regard, the Trademark Examining Attorney submitted third-party Internet evidence demonstrates that Applicant’s financial services are closely related to Registrant’s financial services. For example, Wells Fargo (wellsfargo.com) advertises its “Wells Fargo Dealer Services” which are “integrated financial solutions” tailored for automobile dealers.⁹ These service offerings include aftermarket products and services sold under the WELLS FARGO mark such as vehicle service contracts offered through non-bank affiliates.

In addition, in her December 31, 2013 Office Action, the Trademark Examining Attorney submitted excerpts from eight different banking websites advertising their ability to cater to automobile dealerships (without specifically referencing vehicle service contracts) and divisions to provide financial planning. For example:

⁹ April 24, 2013 and December 31, 2013 Office Actions.

1. BBVA Compass (bbvacompass.com)

BBVA Compass, a commercial bank, advertises its “Auto Dealer Financing” services for automobile dealers, including “indirect auto financing by dealer financial services group.” BBVA Compass also offers financial counseling and wealth management services, including retirement savings programs.

2. BMO Harris Bank (bmoharris.com)

BMO Harris Bank advertises its “dedicated team of specialists serving auto dealerships” that “has established strong relationships with auto dealers for more than 30 years through our indirect loan solutions.” BMO Harris Bank also offers financial advisory services related to financial planning, retirement savings and income, and investment advice. With respect to small businesses, including automobile dealers, BMO Harris Bank offers small business financial planning services (*i.e.*, retirement plans as an employee benefit).

3. SunTrust (suntrust.com)

SunTrust’s “auto dealer banking specialists currently serve more than 600 dealership clients and have decades of combined experience in auto dealer financing,” including indirect auto lending and financial management services.

Applicant disputes the probative value of these third-party websites. Applicant asserts that it is providing a specific or niche financial service¹⁰ and the fact that

¹⁰ “Applicant intends to provide financing under the VERA mark for motor vehicle dealers to offer their car-buying customers who wish to purchase vehicle service contracts.” Applicant’s Brief, p. 2. Applicant attempts to further restrict the services by explaining that the vehicle service contracts are administered by a related company. However, we cannot consider that additional restriction because it is not reflected in the description of services. *Octocom Syst. Inc. v. Houston Computers Svcs. Inc.*, 16 USPQ2d at 1787 (“The authority is

there are entities offering a myriad of financial services, including those of Registrant, is not indicative that its services are related to those of Registrant.¹¹

Banks such as those cited by the Examining Attorney as evidence showing alleged “relatedness” of the parties’ respective services are financial supermarkets, “one-stop shop[s] for insurance, investment banking, brokerage, and other financial services. Karmel, Roberta S., “An Orderly Liquidation Authority Is Not The Solution To Too-Big-To-Fail,” 6 Brook. J. Corp. Fin. & Com. L. 1 (Fall 2011); *see also* Investopedia, “Financial Supermarkets,” <http://www.investopedia.com/terms/f/financialsupermarkets.asp> (July 22, 2013) (a financial supermarket is “an institution or company that offers a wide range of financial services under one roof.”). The field of banking and financing has become increasingly diluted in the post-Gramm-Leach-Bliley Financial Modernization Act era of convergence, especially since these financial supermarkets “have adopted unified brands as a key strategy to promote the cross-selling of various products to their customers.” Wilmarth, Arthur E., Jr., “Regulating Wal-Mart: Is Bigger Better In Banking?” 39 Conn. L. Rev. 1539 (May 2007).¹²

However, we find that this reasoning and authority support the opposite conclusion. That is, the sentiment is that consumers have increasingly come to expect that banks are offering under the same brand a variety of financial services to meet all of their clients’ specific financial needs. The evidence, as already discussed, demonstrates that not only do banks or other financial institutions render a variety of financial services, but they do so in an industry-specific manner.

legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed.”). We may not read such limitations into the description of services. *Squirtco v. Tomy Corp.*, 216 USPQ at 940.

¹¹ December 12, 2013 response to Office Action, p. 5.

¹² December 12, 2013 response to Office Action, pp. 5-6.

In other words, a consumer such as the automotive dealership can expect to receive a wide-variety of financial products and services that are tailored to that industry. This would include financing vehicle service contracts as well as financial consultation and advisory services. To wit, SunTrust has an “Auto Dealers” webpage and touts its ability to “offer tailored auto dealer loans and financing to fit your needs” as well as “offer[ing] sophisticated advice and creative financing solutions for the acquisition of new models ... [and] cost-effective customized solutions to assist you with inventory and treasury management and help your dealership run more efficiently.”¹³ Our finding is based on this type of evidence and not the mere fact that the respective services fall into the broad category of financial services. *Cf., Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517, 520 (TTAB 1975) (“In determining whether products are identical or similar, the inquiry should be whether they appeal to the same market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties”). *See also In re W.W. Henry Co.*, 82 USPQ2d 1213, 1215 (TTAB 2007). As indicated above, “[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of the differences in the essential characteristics of the [services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ at 29.

In view of the foregoing, we find that the services are related and may move in the same channels of trade and be sold to the same class of consumers.

¹³ Attached to Office Action dated December 31, 2013 (see TSDR page 20).

E. Balancing the factors.

Despite the fact that the relevant consumers exercise a high degree of care, because the marks are very similar, the services are related, offered through the same channels of trade and to the same class of consumers, we find that Applicant's marks VERA, in standard character form, and VERA PAYMENT PLANS and design, both for "financial services, namely, providing financing for motor vehicle dealers to offer vehicle service contracts," are likely to cause confusion with the registered mark VERA FINANCIAL SOLUTIONS, in standard character form, and with a design, both for "financial advice and consultancy services."

Decision: The refusals to register Applicant's marks are affirmed.